

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STUART A. McKEEVER,  
3019 Marsh Haven  
Johns Island, SC 29455  
843-768-1419

Plaintiff,

vs.

CENTRAL INTELLIGENCE  
AGENCY,  
Office of General Counsel  
Washington, DC 20301-1600

Defendant.

**FILED**

JAN - 8 2013

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

CIVIL ACTION NO.

Case: 1:13-cv-24  
Assigned To : Boasberg, James E  
Assign. Date : 1/8/2013  
Description: FOIA/Privacy Act

COMPLAINT

Parties, Jurisdiction, and Venue

1. The Plaintiff is a citizen of the State of South Carolina, and resides in Johns Island, South Carolina.
2. The Defendant an agency of the United States Government.
3. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331.
4. Venue is properly fixed in this Court. *See* 28 U.S.C. § 1391(e)(1).

Facts

5. The Plaintiff is a published author in the process of completing a book on the subject of this Complaint. For decades, the Plaintiff has repeatedly sought, through properly filed Freedom of Information Act (“FOIA”) requests, to obtain Central Intelligence Agency (“CIA”) records and documents relating to the case of the disappearance (kidnapping) of Professor Jesus de Galindez Suarez (“Galindez”) of Columbia University on the night of March 12, 1956, in New York City.

6. Galindez was an outspoken opponent of Trujillo’s government. He disappeared eleven days after a faculty committee at Columbia University approved his dissertation on Trujillo’s dictatorship.

7. A related case is the murder of the American pilot, Gerald Lester Murphy (“Murphy”), who was hired to fly the kidnapped Galindez from Zahn’s airport on Long Island to the Dominican Republic, where Galindez was tortured then murdered at the direction of Rafael Trujillo, Dictator of the Dominican Republic.

8. For his mission, Murphy was hired by Dominican Republic Brigadier General Arturo Espaillat and directed in this kidnapping operation by an ex-Federal Bureau of Investigation (“FBI”), CIA agent named John Joseph Frank (“Frank”), who was then on Trujillo’s payroll. Frank started working for Trujillo in 1954.

9. In 1957, Frank was indicted by a Federal Grand Jury, then tried in this Court, for violating the Foreign Agents Registration Act of 1938 for failing to register as an agent of a foreign government, namely the government of the Dominican Republic. Frank was convicted and sentenced to prison for two years, but his conviction was

reversed in 1958 by the United States Court of Appeals for the District of Columbia on the grounds that statements made in summation by the Assistant United States Attorney in charge of Frank's prosecution were prejudicial, depriving Frank of a fair trial.

10. In 1959, Frank's second trial ended with a plea of nolo contendere, no prison time, a \$500 fine, and a requirement that Frank file a Foreign Agent registration statement admitting that he worked for the Dominican Republic, but, as part of the plea deal preserving his rights under the United States Constitution's Fifth Amendment privilege against self-incrimination.

11. Frank's nolo contendere plea followed upon CIA General Counsel Lawrence Houston's assertion that the CIA would be embarrassed if it were forced to produce a witness and records subpoenaed by Frank's attorney.

12. One of the defenses Frank raised in both of his trials, although he did not testify about them and thus rejected, was that he was acting on behalf of the United States Government, and, therefore was not required to file a registration statement. Frank's attorney refused to stipulate what the CIA witness would testify about, resulting in the nolo contendere plea with Frank then walking free.

13. Unknown except to his FBI handlers, Galindez was a highly regarded confidential informant for the FBI. Galindez was also the United States representative of the Basque government-in-exile headquartered in Paris, France

14. The National Archives Administration of the United States has classified the Galindez case as having "permanent historical value."

15. In the public interest, the Justice Department, through the auspices of the National Archives Administration as the repository, has recently made available some ten thousand (10,000) pages of Justice Department Internal Security and Criminal Division records relating to the Galindez case that were heretofore classified. The Plaintiff reviewed these records in March 2012.

16. In addition, and over a period of many years, the FBI has periodically released to the public thousands of pages on the Galindez case, which the Plaintiff has also obtained and reviewed.

17. Records of the United States District Court for the District of Columbia relating to the Galindez case, and the Murphy murder in the case of *United States vs. John Joseph Frank a/k/a "John Kane"* under criminal docket No.493-1957, have been examined by the Plaintiff. Grand Jury testimony has not yet been made public pursuant to court order.

18. In September 1962, the CIA requested the FBI to investigate whether present or former agency employees or independent contractors had received money from Trujillo's administration during the time frame of Galindez's kidnapping. The results of that investigation, if, in fact, it was conducted, remain unknown.

19. On April 5, 1956, a CIA memorandum prepared by the CIA's "Chief, Office of Security" recommended that representatives of the CIA's Security Support Division, set up as an operational component to secure the success of covert operations of the CIA, receive commendations "for the assistance and cooperation given to this

division in a sensitive case involving Jesus de Galindez New York representative of the Basque Government in Exile.” The commendations were to be placed in the personnel files of CIA “officers” involved in the case. Whatever “assistance and cooperation” was given to the CIA’s Security Support Division in the admittedly “sensitive” Galindez case remains classified. Galindez was assigned the reference number #92767.

20. A week later, on April 12, 1956, FBI Director J. Edgar Hoover sent a request to the CIA to “furnish any information now available in your files which might pertain to the disappearance of De Galindez and also to alert logical sources available to you so that any additional information regarding De Galindez coming to the attention of such sources might be promptly obtained.”

21. On April 24, 1956, an internal CIA memorandum was sent to the CIA’s “Chief, Office of Security---Attention Security Support Division” requesting “that your office obtain the following data needed by this Division in connection with the investigation of the disappearance on 12 March 1956 of Professor Jesus de Galindez Suarez”:

(1) Descriptions of the travel documents used by Galindez from the time of his original arrival in the United States in 1946 until his disappearance.

(2) The dates of arrivals into and departures from the United States of General Arturo Espaillat, Dominican Army officer and diplomat, with particular attention to the period January to April 1956.

(3) The contents of any records in the possession of the Civil Aeronautics Administration which may indicate the route taken between Zahn’s Airport, Amityville, Long Island, New York, and Miami, Florida by the plane piloted by Gerald Lester Murphy on the night of 12 March 1956.

22. The CIA's April 24<sup>th</sup> memorandum incorporated information the FBI already had in its possession---that a pilot, Gerald Lester Murphy "used a C-18-S twin Beechcraft airplane CAA number N68100 for this flight." The CIA memo went on to state "Circumstantial evidence thus far available indicates Murphy took off from Zahn's airport at about 2330, 12 March 1956, with GALINDEZ and another unidentified individual on board; landed at Lantana Airport (Florida) between 0530 and 0630; fueled the plane and departed for an unknown location, probably Monticristi, Dominican Republic, where he dropped his passengers and returned to Lantana airport arriving at about 1700."

23. The CIA's Office of Security, through its Security Support Division, was requested to obtain records from the Strategic Air Command "developed from Air Defense radar contacts with N68100 on 13 March 1956 that may be helpful in determining Murphy's destination during the flight from Lantana on 13 March."

24. In May 1956, the United States Senator from New York, Herbert Lehman, wrote to CIA Director Allen Dulles requesting information about Galindez's disappearance in New York City. The Director of the CIA refused to provide any such information, reciting in reply to Senator Lehman that the CIA is precluded by statute from the performance of any functions in the internal security field.

25. As for the pilot, Gerald Lester Murphy, Oregon Congressman Wayne Morse pursued the cause of Murphy's murder in January 1962 by writing to the Secretary of State, with a copy to the CIA.

26. John McCone, then the Director of the CIA, responded to Congressman Morse by stating that he had been advised that the State Department would communicate with the Congressman in the near future. Director McCone further replied that reports of the nature raised by the Congressman are not matters falling within the responsibilities of the CIA.

27. The policy of the CIA to stonewall requests for information about the Galindez matter continued unabated at the highest levels of Government.

28. In 1979, a Freedom of Information Act (FOIA) case was commenced in this Court against the CIA and the FBI by Professor Alan Fitzgibbon (Fitzgibbon) under civil docket number 79-0956.

29. As a result of his seeking this Court's intervention, certain CIA records were declassified and released to Fitzgibbon by order of this Court, but, upon information and belief, Fitzgibbon was compelled to appeal, without success, for the release of other records deemed classified by the CIA under claims of National Security.

30. References to CIA memos contained this Complaint are based on the Plaintiff's receipt of the same CIA documents received by Fitzgibbon. No other documents have been received by the Plaintiff despite numerous FOIA filings and correspondence, none of which have produced the files, documents, and records which the Plaintiff has sought. Under FOIA requests F-2006, F-00028, F-2010-00305 (formerly F-20090-00511)--going back to November 6, 2006, almost six years ago--the CIA has

done nothing but deny the existence of such records after a search, or force the Plaintiff to file an administrative appeal.

31. On one occasion, the Plaintiff sent to the CIA copies of its memo of April 5, 1956 with the FOIA request that the agency produce the recommendations that were to be placed in the files of CIA security support personnel without requiring the prohibited disclosure of the names of those affected. In a bizarre response, the CIA denied the existence of the very records the Plaintiff sent for the agency's review----records which the agency, in fact, produced in the Fitzgibbon case.

32. The CIA has also applied such methodology to the Plaintiff's other FOIA requests directed to the agency. The CIA has engaged in a systematic, pro forma denial of the Plaintiff's FOIA requests related to the Galindez matter.

**COUNT ONE**  
**(Release of Records Relating to the Galindez Case**  
**5 U.S.C. § 552(a)(3))**

33. The allegations contained in paragraphs 1 through 32 are repeated and realleged as if fully set forth herein.

34. The Plaintiff has made numerous requests to the CIA for records relating to the Galindez case. In making such requests, the Plaintiff has met the requirements of 5 U.S.C. § 552(a)(3)(A).

35. The CIA has systematically denied the Plaintiff's requests for records relating to the Galindez case by responding (a) that the agency's responsibilities do not include the performance of intelligence functions within the United States, (b) that any



records pertaining to the agency's activities outside the United States are exempt from disclosure in order to protect intelligence sources and methods, and (c) that the release of the records requested by the Plaintiff would cause embarrassment to the agency and its personnel. Such pro forma responses are insufficient to establish that the records sought by the Plaintiff are exempt from disclosure under FOIA.

36. In light of the fact that more than 50 years have passed since the Galindez kidnapping, the continued withholding of records pertaining to that case is unnecessary to protect intelligence sources and methods. The CIA has not demonstrated any particularized harm to intelligence sources and methods from the disclosure of the requested records, for purposes of exemption from disclosure under FOIA. The agency's statements that it can neither confirm nor deny the existence of the requested records is an insufficient response under FOIA.

37. Moreover, the requested records are not exempt as documents designated as classified for national security or foreign policy purposes. Due to the lapse of more than 50 years since the Galindez incident, disclosure of the records would not lead to the disclosure of the identity of any CIA sources or presently existing intelligence methods, nor would disclosure of the records undermine the agency's ability to retain current sources.

38. If a governmental agency has officially acknowledged information, a FOIA requester may compel disclosure of that information even over the agency's otherwise

valid claim of exemption. The CIA has previously admitted activity in the Galindez case by its employees or contract personnel.

39. With respect to the Galindez matter specifically, the United States District Court for the District of Columbia held in 1983 that information provided by the CIA's past sources, most of whom gave information more than 25 years prior to that date and who had had no dealings with the agency since that time, was not entitled to a presumption that disclosure would be likely to cause identifiable damage to national security or United States foreign policy, so as to be exempt from disclosure under FOIA. The pertinent question is, rather, whether any particular source would be likely to face retribution or embarrassment in the present, such that he or she would have withheld information had he or she known or suspected that any confidentiality promised would expire after the period between the promise of confidentiality and the request for disclosure of the records. The answer to that question in 2012 is in the negative.

40. Mere embarrassment resulting to persons disclosed in the records, which is not connected with protection of an intelligence source, is insufficient, under any circumstances, to exempt CIA records from disclosure under FOIA.

41. The passage of a substantial period between a particular CIA operation and a request for agency records under FOIA requires that the agency, in order to exempt the requested records from disclosure on the basis of national security, declare through affidavit that the responsive material has been reviewed to assure the continuing accuracy of its original classification, and that a determination has been made that the withheld

information still poses a national security risk if released. No such showing has been made in response to the Plaintiff's requests for records relating to the Galindez matter.

WHEREFORE, the Plaintiff demands judgment as follows:

for an order compelling the Defendant to respond to the Plaintiff's requests for disclosure of the agency's records as required by FOIA, and, with respect to such requests as to which the agency cannot demonstrate the applicability of an exemption, for an order compelling the Defendant to disclose the requested records;

as well as such other and further relief as to the Court is reasonable, just, and proper.

Respectfully submitted,



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